Supreme Court, U.S.
FILED

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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1996

ROSARIA D'AMBROSIO,
Petitioner

v.

SHOPPERS FOOD WAREHOUSE, VA CORP.,
D/B/A Shoppers Food Warehouse,
Respondent

Petition for a Writ of Certiorari to the
Supreme Court of the Commonwealth of Virginia

PETITION FOR A WRIT OF CERTIORARI

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37 pp

QUESTIONS PRESENTED

In this tort action the trial court granted a Judgement Notwithstanding The Verdict to the Defendant and vacated a jury award to the Plaintif of $60,000. The following questions are presented in this petition:

(1) Whether the granting of the Defendant's Motion For Judgement Notwithstanding The Verdict violates the Petitioner's constitutionally protected right of trial by jury and to have no fact tried by jury be otherwise reexamined in any Court of the United States, than according to the rules of common law, as set out in the Seventh Amendment.

(2) Whether the granting of the Defendant's Motion For Judgement Notwithstanding The Verdict violated the Petitioner's constitutionally protected right to due process under the Fourteenth Amendment.

(3) Whether the trial court's application of Virginia law is such a departure from any acceptable standard of review that the Plaintiff's right to a jury trial or due process under (1) or (2), above, is a separate deprivation of constitutional rights.

PARTIES AND RULE 29.6 STATEMENT

All of the parties who participated below are set out in the caption.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES AND RULE 29.6 STATEMENT. . .ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW. 1

JURISDICTION. 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION. . 3

CONCLUSION 11

TABLE OF AUTHORITIES

Cases — Page

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986) 7

De Ramirez v. Sovereign Camp, W.O. W., Civ.App., 123 S.W.2d 737 8

Dorsey v. Barba, 240 P.2d 604 8

Dudley v. Harrison, McCready & Co., 173 So. 820. 8

Gray v. Southern Pac. Co., 145 P.2d 561 10

National Car Rental System, Inc. v. Better Monkey Grip Co.,C.A.Tex, 511 F.2d 724 7

Rogers v. City of Fort Worth, Tex.Civ. App., 275 S.W. 214 8

Rhenquist dissent in Parklane Housing Co. v. Shore, 439 U.S. 322 (1979) 6

Schmitz v. Yant, 409 P.2d 346 8

Security Mut. Casualty Co. v. Affiliated FM Ins. Co., (CA 8 Minn) 471 F2d 238 6

The Fourteenth Amendment, William J. Brennan, Jr., Trial, December 1989, p.26 9

15 The Papers of Thomas Jefferson, 267 (Boyd ed., 1958) 6

16 Am Jur 2 § 716 and § 717 5

47 Am Jur 2d, Jury § 17, citing to Presidential Properties Inc. v. Canto, (CA 5 Fla) 615 F2d 657 . . . 6

47 Am Jur 2d, Jury § 15 citing to Woodward v. Atlantic C.L.R., (CA 5 Fla) 57 LF2d 1019. 7

47 Am Jur 2d, Jury, § 2 9

50 CJS, Juries § 128 (d). 9

CONSTITUTIONAL PROVISIONS

Article IV, § 2 [1]. 1

Seventh Amendment. 1

Fourteenth Amendment. 2

PETITION FOR A WRIT OF CERTIORARI

Rosaria D'Ambrosio respectfully petitions for a Writ of Certiorari to review the judgment of the Supreme Court of Virginia in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Virginia is attached in the Appendix.

JURISDICTION

The Supreme Court of Virginia rendered its decision on July 30, 1996, a timely Petition For Rehearing was denied on September 13, 1996. This court's jurisdiction is involved under 28 USC § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, § 2 [1] of the U.S. Constitution states:

> **"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."**

The Seventh Amendment of the United States Constitution States:

> **"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."**

The Fourteenth Amendment of the United States Constitution provides, in pertinent part:

> **"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."**

STATEMENT OF THE CASE

A. The Proceedings Below.

This tort action was to recover damages for injuries incurred by the plaintiff when she tripped and fell in the defendant's grocery store.

The plaintiff adduced evidence that, as she walked into the defendant's store with her mother she noted the defendant's employee taking produce from full produce boxes stacked on a cart in the store aisle.

The plaintiff avoided that area and began looking at produce in a center aisle island display case. After walking around the island display case she turned to retrace her steps, tripping over a full box of produce apparently placed directly behind her by the store employee. The produce was in the sam sort of box from which the employee had been working and when he saw the plaintiff trip and fall he immediately began apologizing for the box having been placed behind the plaintiff and picked up the box and began clearing the mess left on the floor from the full box of produce that was scattered when the plaintiff tripped over it. The defendant adduced no evidence,

but argued that, as a matter of law in Virginia the plaintiff was contributorily negligent because the box was in plain view. Thus the plaintiff could, under Virginia law, recover nothing.

At the close of the plaintiff's case, the defendant made a Motion To Strike which was taken under advisement by the Court. The defendant then rested without adding any evidence and renewed its Motion To Strike which was also taken under advisement by the Court. The jury was then instructed by the Court, the Plaintiff and the Defendant made closing arguments and the matter was presented to the jury which returned a verdict for the Plaintiff in the amount of $60,000. The jury was discharged and the defendant moved for judgement notwithstanding the verdict.

The Court then granted the Defendant's Motion To Strike and Motion for Judgement Notwithstanding The Verdict by order entered February 14, 1996.

The Plaintiff filed a timely Notice of Appeal and filed a timely Petition For Appeal with the Supreme Court of Virginia, which was timely responded to by the Defendant's Brief In Opposition To Petition For Appeal. After hearing oral argument from the Plaintiff, the Supreme Court of Virginia refused the Petition For Appeal by order of July 30, 1996. The Plaintiff filed a timely Petition For Rehearing which was denied on September 13, 1996.

REASONS FOR GRANTING THE PETITION

I. THE TRIAL COURT'S GRANTING OF THE DEFENDANT'S MOTION FOR JUDGEMENT NOTWITHSTANDING THE VERDICT DISREGARDED ITS OWN STATE'S STANDARD OF REVIEW AND EFFECTIVELY DEPRIVED THE PLAINTIFF OF HER DUE PROCESS RIGHTS AND FURTHER, HER CONSTITUTIONAL RIGHTS GUARANTEED UNDER

ARTICLE IV § 2 AND THE SEVENTH AMENDMENT TO THE U.S. CONSTITUTION.

In the past, this Court has uniformly held that the 14th Amendment right to due process does not apply to states in civil matters so as to grant Seventh Amendment guarantees to a right to a jury trial in state courts. It is Appellate's position that it time for this Court to break from its past rulings and apply the Seventh Amendment, the Fourteenth Amendment and Article IV § 2 in conjunction in such a way as to allow every state's citizens the same right to a jury trial, whether the matter be criminal or civil. To hold otherwise is not now, nor has it ever been logically consistent. To hold otherwise is not now, nor has it ever been consistent with the clear intent of the framers of the Constitution to make access to court redress uniform throughout the many states.

If this Court were to so rule, and thus require each state to follow federal guidelines to the Defendant's Motion For Judgement Notwithstanding The Verdict, Appellant would retain her jury verdict as justice requires.

Failing that radical departure, Appellant here argues that, even if the 14th Amendment's due process clause is not applied to the states so as to require state uniformity in granting jury trials, it still ought to be applied to require states' uniformity in setting standards as to how and when a rendered jury verdict may be set aside. Failing that, it still ought to be applied so as to require a state to at least adhere to its own standards in determining when a court may tamper with a rendered verdict.

To set it out plainly, appellant is here asking the Court to tell the states that all must grant jury trials in civil cases in a way that complies with the Seventh Amendment.

If this Court is unwilling to go that far, appellant asks merely that this court tell the states that: once you have given someone a right to a jury trial, you must then follow Article IV, and the Seventh and Fourteenth Amendments in determining how and when you can snatch from the plaintiff her verdict.

If this Court is yet unwilling to go that far, appellant asks that this Court tell each state that :

> **If you have given a person a jury trial and you have set out standards for when a jury verdict may be not only set aside, but further, judgement be granted in contravention of that verdict, you must at least follow Article IV, the Seventh and Fourteenth Amendments' and comply with your own stated standards.**

The Fourteenth Amendment has been applied in a straightforward manner in various cases to advance the Article IV Privileges and Immunities Clause.

It is logically absurdity to suggest that the privileges and immunities clause of Article IV relates, vis a vis jury trials, only to criminal trials.

Article IV § 2 gives each U.S. citizen the same constitutional privileges and immunities irrespective of their state of residence.

The Fourteenth Amendment makes clear that U.S. citizenship is paramount and dominates state citizenship with regard to each individual's privileges and immunities. See 16a Am Jur 2 § 716 and § 717.

To allow each state to have, or more pertinently to apply, different sets of standards to determine when a judge may snatch a jury verdict from a Plaintiff makes a mockery of what should be at least a uniform standard of conduct for r a jury trial, once granted.

There is precedent for the application of the Seventh Amendment to the standards that apply to the conduct of a jury trial even where no right to jury trial exists. It has been held that review of a verdict where a jury trial was not a matter of right bur was granted with the consent of the parties, the test of the sufficiency of evidence is the same as the one applicable of the jury trial had been a matter of right. See 47 Am Jur 2d, Jury § 11, citing to Security Mut. Casualty co. v. Affiliated FM Ins. Co. (CA 8 Minn) 471 F2d 238.

The importance of the right to a jury trial ought to be sufficient to compel this court to give its sanction to a uniform right to jury trials within the several states. See 15 The Papers of Thomas Jefferson, 267 (Boyd ed., 1958); and the Rehnquist dissent in Parklane Housing Co. v. Shore, 439 U.S. 322 (1979).

But this Court need not go that far to advance justice in this case. The sanctity of jury verdicts, separate and apart from the threshold right to jury trial initially, is within the preview of Article IV, the Seventh and Fourteenth Amendments. The standard for determining when a Federal Court trial judge may grant a judgement notwithstanding a verdict is clear (and was clearly not followed and is apparently not the law in Virginia.)

The trial court should not, under the Seventh Amendment, tamper with a rendered verdict and grant a judgement notwithstanding the verdict unless the jury has clearly committed error. See 47 Am Jur 2d, Jury § 17, citing to Presidential Properties Inc. v. Canto, (CA 5 Fla) 615 F2d 657.

The Court is not to usurp the function of the jury by taking cases from the jury where the evidence is conflicting or where different

conclusions could be drawn from the undisputed facts. See 47 Am Jur 2d, Jury § 15 citing to Woodward v. Atlantic C.L.R., (CA 5 Fla) 57 F2d 1019.

This Court has shown its high regard for the sanctity of jury trials, once granted, by setting a clear and high standard for any review of a jury's factual findings in holding that:

> "Credibility determinations, the weighing of evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the non-movant is to be believed, and all Justifiable inferences are to be drawn in his favor."

See Anderson v. Liberty Lobby, Inc., 477 U.S.242, 255 (1986). It is essential for any U.S. court, whether state or Federal, in reviewing a jury verdict to abide by these guidelines. Otherwise, the province of the jury is invaded, resulting in a violation for the Seventh Amendment.

It might be argued that the sort of Federal oversight of state court rulings advocated here is an unnecessary intrusion into the states' judicial independence.

That argument can be met with a rule that applies the common law rule that was in existence at the time the Seventh Amendment was drafted, to wit, that if a trial judge determines an insufficiency of evidence or sufficient proof of a legal defense to require the setting aside of a jury verdict, his authority is limited to the granting of a new trial absent a showing of both no evidence and insufficient pleading. See National Car Rent.

Sys., Inc. v. Better Monkey Grip Co., 511 F2d 724; Roger v. City of Fort Worth, 275 SW 214 (1925); Dudley v. Harrison McCready and Co., 173 So 825 (1937); and De Ramirez v. Sovereign Camp W.O.W., 123 SW2d 737.

See also Dorsey v. Barba, 240 P2d 604 (1952) which held, in part, that:

> ". . . it is not the mere form of a jury trial to which one is entitled under the Constitution, but the fundamental right to have a jury determination of a question of fact. It is of course, clear that there has been no denial of such right if a verdict is set aside and motion for new trial granted." (emphasis mine) p.609.

This compromise rule being advocated here is one that is already being applied in many states. It has the logical beauty of allowing states to retain complete control over when and how to allow a jury verdict to stand while simultaneously preserving for each U.S. citizen his absolute Constitutional guarantee of final jury determination of fact issues. See Schmitz v. Yant, 409 P2d 346, at p. 350 where the court states:

> "It should be made clear that as between the conflicting principals of allowing the trial judge wide discretion in granting new trials and of protecting the jury system as an effective method of deciding disputed this court believes the latter to be of the greater consequence."

See also Rogers v. City of Fort Worth, 275 SW 214.

The application of the rule here suggested would have no effect on state statutes or case

law that has held there to be no constitutional violation in the gravity of a motion for judgment notwithstanding the verdict in accordance with uncontradicted evidence or where there is no evidence to support the jury verdict, or where under leave reserved with jury's assent to render such a verdict. See 50 C.J.S. Juries § 128(d) and the line of cases cited there. See also The Fourteenth Amendment, William J. Brennan, Jr., Trial, December 1989, p. 26, where he states:

> "When Congress decided to rely on the federal judiciary to define and enforce the guarantees of the fourteenth amendment, it was in effect conceding the peculiar competence of that branch of government to perform such tasks. The legislative, executive, or other arm of government alleged to have encroached on or threatened to trammel rights may be compelled by courts to make amends or to refrain from acting. Without some such means of vindication, legal rights are likely to become little more than moral claims, readily ignored when the forces of government find it convenient to do so."

In a very real sense the right to an unimpeded jury trial in a civil case is an issue that goes to the gravamen of the fourteenth amendment, i.e. providing to all U.S. citizens freedom and equality before the courts. To erode the sanctity of a jury trial, even in a civil case erodes individual freedom. Such an erosion has no legitimate purpose. To guard against such an erosion is why Article IV, the seventh and fourteenth amendments where promulgated. See 47 Am Jur, Jury, § 2 where it states:

"The purpose for a jury is to guard against the excesses of arbitrary power, to make available the common sense judgment of the community in preference to the professional or perhaps overconditioned or biased response of a judge".

See also Gray v. Southern Pac. Co., 145 P2d 561, which reiterates the strict federal rule with regard to setting aside a jury verdict.

In the instant case it is clear that:

1. The pleadings were sufficient;

2. The plaintiff adduced significant evidence in support of the jury verdict; and

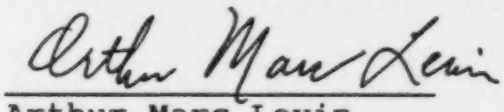
3. There was no real evidence of the plaintiff's contributory negligence. All of the above issues were effectively raised at trial and in the appellate pleadings. See the trial transcript and Appellate Brief attached in pertinent part of the appendix.

It is also clear that the rule of law as applied in this case effectively denied the plaintiff her constitutionally guaranteed right to a jury trial.

CONCLUSION

For the above reasons a Writ of Certiori should be granted to review the judgment and opinion of the Supreme Court of Virginia.

Respectfully submitted,



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